

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES**

DALLAS AIRMOTIVE, INC.,

Respondent

and

Case 16-CA-192780

**INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE
WORKERS, AFL-CIO, DISTRICT
LODGE 776,**

Charging Party

**CHARGING PARTY'S POST HEARING BRIEF
TO THE ADMINISTRATIVE LAW JUDGE**

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International Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge 776, Charging Party, files its Post Hearing Brief to the Administrative Law Judge.

I. Statement of the Case

Respondent, Dallas Airmotive, Inc. (*Airmotive* or *Company*) is a Texas corporation and a subsidiary of BBA Aviation. It is engaged in the business of the repair and maintenance of aircraft turbine engines. For many years Airmotive operated three facilities in the DFW area -- Forest Park, Heritage Park and Love Field -- until late 2016. The Forest Park facility was the oldest and largest facility.

International Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge 776 (*IAM* or *Union*) is the exclusive representative of a unit of production and maintenance workers. The Union represented employees at the Forest Park facility from January 13, 1966 until the Company ceased operations there around December 2017. The employees of Heritage Park and Love Field were never represented by a labor organization.

The process that Airmotive followed to close the Forest Park facility was obscure and protracted. In 2014, the Company announced its intention to move its Forest Park operations to Heritage Park and Love Field. Airmotive and the Union entered into a limited closure agreement in the same year. In August 2015, the parties executed another closure agreement and at the same time entered into a new collective bargaining agreement that would remain in effect until March 2018. Many unit employees obtained jobs at other facilities, other employees accepted voluntary severance packages, and a number of others were laid off. The number of bargaining unit employees declined from 390 in 2013 to approximately 226 by the end of 2014.

Forest Park remained the largest of Airmotive's DFW area facilities. Heritage Park employed approximately 160 workers from 2013 to 2016. Love Field's work force increased

from 15 employees in December 2014 to 35 employees in August 2016. The 226 employees in the unit at Forest Park exceed the combined total of employees at Heritage Park and Love Field.

In 2014 Airmotive announced that it would design and construct a new facility in the DFW area that would include a new test cell structure and a *Rotocraft Center of Excellence*. DFW Center, the new facility, is located ten miles from the Forest Park facility. In September 2016, the Company began transferring employees from Forest Park and Heritage Park to DFW Center. At some point Airmotive decided to relocate the entire bargaining unit and all unit work to DFW Center. It is still unclear when this decision was made, but it is undisputed that the Company failed to notify the Union at any time before the relocation of the bargaining unit became a fait accompli.

By January 2017, DFW Center employed 147 unit employees while only 76 remained at Forest Park. Approximately 72 percent (147 of 203) of all employees working at DFW Center in January 2017 had transferred directly from Forest Park. The unit employees performed the same work that they had previously performed at Forest Park under essentially the same supervision.

Because unit employees were a clear majority at DFW Center, the IAM demanded Airmotive to recognize the Union as the representative of employees there who were performing work historically performed by unit employees. Airmotive refused the Union's request and presented an official notice that it had withdrawn recognition.

The crux of this case is whether Airmotive unlawfully withdrew recognition from the IAM when it relocated its Forest Park operations to the DFW Center. The law is well established that an employer must grant the union recognition where a majority of employees in a new facility are members of a recognized bargaining unit. Airmotive violated the Act in this case by withdrawing recognition from the IAM because there is substantial continuity between the Forest

Park and DFW Center operations and because the unit employees are performing the same work at the new facility. The employer also violated the Act by unilaterally implementing changes in the unit employees' hours, wages, and other terms and conditions of their employment. Moreover, Airmotive violated Section 8(a)(2) and (1) of the Act by creating and then dominating the so-called Ambassadors program.

Airmotive advances three arguments in support of its contention that it was not obligated to recognize the Union at DFW Center. First, the Company asserts that the Union waived its right to represent the employees at the new facility. Second, the Company asserts that it had implemented a consolidation plan that will relegate the Forest Park employees to an unidentifiable minority group at the new facility by late 2018. Third, Airmotive claims that its continued application of the CBA to unit employees during continuing but limited operations at Forest Park in late 2016 and 2017 satisfied its bargaining obligations. None of these arguments has merit. An analysis of prevailing law will show that there was no clear and unmistakable waiver, the purported plan was neither sufficiently specific nor timely, and application of the CBA at the Forest Park facility is not relevant to the employer's statutory obligations to the Union at DFW Center.

This brief principally will address Airmotive's withdrawal of recognition. Additionally, the brief will address whether the Company made certain unilateral changes to terms and conditions of employment and whether such changes were permissible. Finally, this brief will address whether the ongoing Ambassador program constitutes an employer dominated labor organization in violation of Section 8(a)(2).

II. Procedural History

The IAM filed its original unfair labor practice charge in Case 16-CA-192780 on February 8, 2017 and its first amended charge on March 15, 2017. Exhibit (*Ex.*) GC-1(a). The Regional Director filed a *Complaint and Notice of Hearing (Complaint)* in the case dated December 29, 2017, and set the matter for hearing on May 7, 2018. *Ex.* GC -1(c). Airmotive filed its Answer to the Complaint on or about January 11, 2018. *Ex.* GC-1(e).

By an *Order Rescheduling Hearing* dated April 30, 2018, the Regional Director re-set the hearing for June 11, 2018. *Ex.* GC-1(f). The hearing took place June 11-13, 2018 at Region 16 in Fort Worth, Texas before Administrative Law Judge Sharon Steckler.

Certain amendments to the Complaint were made on the record over the course of the three-day hearing. Prior to the commencement of the hearing, the ALJ accepted the General Counsel's proposed amendments to paragraphs 2 and 6 of the Complaint, which were made without objection. Tr. 9-10. The ALJ also approved on the record the Charging Party's oral motion that the Complaint be amended to include the full name of the Charging Party, District Lodge 776. Tr. 11-12. On the third day of hearing, the General Counsel moved to amend the Complaint to allege a violation of Section 8(a)(2) of the Act by showing that Airmotive's Ambassadors program is a company-dominated labor organization. Tr. 426. The ALJ accepted the amendment. Tr. 427.

III. Statement of Facts

A. Dallas Airmotive's Operations and Leadership

In 2014, Dallas Airmotive had three Dallas-Fort Worth Metroplex (*DFW*) locations: Forest Park in Dallas, Heritage Park in Grapevine, and Love Field at Dallas Love Field Airport.¹

¹ The Love Field facility is sometimes referred to as *Hangar C*. Tr. 152.

Tr. 152. Forest Park was unionized, but Heritage Park and Love Field were not. Tr. 152. At Forest Park, employees worked on rebuilding turbine engines for jets, removing and checking accessories in an accessories shop, and starting up and testing jet engines in the test cell. Tr. 154.

Three witnesses who were members of management at relevant times – Nandu Madireddi, David Daniel, and Max Allen – testified at hearing. Madireddi was formerly Airmotive’s chief operating officer until April or May 2015. Tr. 404. Max Allen became vice president of operations when Madireddi left the Company. Tr. 301. In 2014 and 2015, Allen was General Manager of the Forest Park facility, reporting to Madireddi. Tr. 237. Allen was last employed at the Company as its vice president of operations and General Manager over all of the repair and overhaul facilities in the United States, including the Forest Park, Heritage Park and Love Field locations, until he was laid off on August 2, 2017. Tr. 235-37, 239-40.

Airmotive has employed David Daniel in human resources since March 2007. Tr. 374. He was originally hired as the Director of Human Resources at Forest Park, a position that he held until 2012 when his role expanded to include all U.S.-based operations, Singapore and Brazil. Tr. 375. Since October 2016, Daniel has been Vice President of Human Resources for the U.S., Singapore, and Brazil. Tr. 374. When his tenure as Director of Human Resources began there were three unionized Airmotive facilities including Forest Park, a facility in New Jersey, and a facility in Missouri. Tr. 376. Currently he is involved with eleven Airmotive facilities, none of which are organized, including the original facilities that had unions. Tr. 374.

B. The IAM Has Been the Certified Collective Bargaining Representative of a Unit at Dallas Airmotive Since 1966

The NLRB certified the IAM as the exclusive representative of “all production and maintenance employees employed by the Company at its facilities located at 6114 Forest Park Road, Dallas, Texas” in Case No. 16-RC-4105 on January 13, 1966. Ex. GC-28, art. 1.

Employees at Heritage Park and Love Field have never been represented by a labor organization. Tr. 53, 152.

For almost 52 years, Airmotive recognized the IAM as the exclusive collective bargaining representative of its production and maintenance workers at its Forest Park location pursuant to a series of collective bargaining agreements, the most recent of which was effective from March 15, 2015 to March 15, 2018 (*CBA*). Tr. 92; Ex. J-28. The CBA recognized Airmotive's duty to cooperate with the IAM and to refrain from making unilateral changes in its rules, regulations, and instructions. *See* Ex. J-28, art. 2 (duty of Company and Union to cooperate fully for the advancement of "the efficiency of operation and the continuation of employment under conditions of reasonable hours, proper compensation and reasonable working conditions."); Ex. J-28, art. 3 ("The Company will discuss any changes in its rules, regulations and instructions with the Union prior to placing same in effect.").

In addition to Allen, Daniel and Madiredi, the Counsel for the General Counsel called several witnesses at the hearing including Union officials Paul Black and Doyle Huddleston and Airmotive employees Jim LeFlore, Wesley Blaine, Kenny Jackson, and Fred Andrews. Black has been President and Directing Business Representative of District Lodge 776 for the past eight years; he supervises 18 staff members including Huddleston. Tr. 40-41. The IAM has employed Huddleston as a Business Representative for 10 years, and he has represented employees at Forest Park for a number of years. Tr. 152-53. His duties include presenting grievances in arbitration, negotiating contracts, representing members in various employment matters, and other functions related to representation. Tr. 152.

LeFlore, Blaine, Anderson and Jackson are all long-time Airmotive employees who previously worked at the Forest Park location and now work at the DFW Center. All were local

union leaders while they worked at Forest Park. Tr. 72-73, 104, 126, 132, 313-16, 320, 354-55, 358. LeFlore and Blaine have served on the last three negotiating committees, and they were on the negotiating committee for a three-year term until expiration of the current CBA, from 2015 to 2018. Tr. 73-74, 132. In that capacity, they assisted Huddleston in negotiations over the closure of the Forest Park facility. Tr. 73-74, 132. Blaine was also chair of the shop committee for the past eight years until the relocation to the DFW Center when the shop committee ceased to exist. Tr. 73.

C. In 2014, Airmotive Announces Plans to Close Its Forest Park Facility

Sometime in December 2013, Huddleston began to hear rumors that Airmotive might close the Forest Park plant or move its operations to a new location. Tr. 154. When asked Daniel about the rumors, Daniel did not deny or confirm them. Tr. 155. Then, in January 2014, Airmotive contacted Huddleston to set up a meeting to discuss its plans. Tr. 155.

On or about January 12, 2014, Huddleston, LeFlore, Blaine, and the Union's counsel, Rod Tanner, met with Daniel, Madireddi, and Airmotive's counsel, William Finegan² at a Dallas hotel for approximately two hours to discuss the rumors. Tr. 155-56. Madireddi stated that the Company was actively searching for a new site for the test cell facility because noise from test cell operations was a major issue due to development of the area surrounding the Forest Park facility making, and because the facility was in a medical district. Tr. 156. Although Daniel erroneously referred to the January 2014 meeting with the Union as *decisional bargaining*, the meeting's purpose was effects bargaining since Airmotive had made its decision to leave Forest Park long before the meeting took place. Tr. 512-18; Ex. CP-2. The Company did not consult

² Finegan did not ever attend any other meetings with the Union to Huddleston's knowledge. Tr. 155. Tanner was present at the initial meeting in January 2014, but he did not attend any further meetings between the negotiating committee and the Company. Tr. 148.

with the Union regarding the closure date of Forest Park, how many employees would remain at Forest Park, or as to how compensation would be handled. Tr. 515-17.

Huddleston responded to Madireddi's announcement by stating that the IAM wanted recognition at the new test cell site. Tr. 156-158. Madireddi explained that the Company was looking at distributing the Forest Park work to all of the other DFW area sites at Heritage Park and Love Field. Tr. 156-57. Huddleston attempted to obtain timelines for the planned transition, but with the exception of Phase I, Airmotive never presented a reliable and accurate timeline. Tr. 157, 159-160. Huddleston was unhappy that the Company was closing the Forest Park site, but under the circumstances, the union representatives focused on doing all they could to protect the employees' jobs. Tr. 159.

Airmotive advised the Union that the closure of Forest Park would be implemented in phases, and the parties' representatives met four to five times in January and February 2014 to work out Phase I of the planned closure. Tr. 73-75, 132-35, 148. At no time during these negotiations did the Company ever state or even suggest that its operations at all three of the DFW area facilities would be moved to the DFW Center or to any other new location. Tr. 107. Instead, the discussions concerned whether the unit employees would be required to bid and interview for jobs at Heritage Park and Love Field, and whether their jobs, attendance records, work performance, and safety records would all be considered. Tr. 133-34.

On January 15, 2014, Daniel sent Huddleston and other Union members an e-mail with an attached announcement from Madireddi regarding the Forest Park transition that he claimed Airmotive planned to distribute that same day. Tr. 50-52; Ex. GC-5(a). The announcement stated that the Company had met with the Union and shared their proposed strategy for Phase I of the Forest Park transition:

Through our discussions, we have shared a proposed strategy for phase one of our transition with the Union. Our recommendation for the initial movement of work (Phase I) is based on excess capacity at existing facilities in the DFW area. This is subject to input and approval from our OEM's, but over the next 4-6 months we anticipate transitioning the following work:

- With the exception of test, JT15D/PW300/PW500 and some associated component repair, will transition to Heritage Park
- PT6, with the exception of most component repair and test, will transition to Hangar C.

Phase I is scheduled for completion in June 2014. Work remaining at Forest Park at the end of Phase I will include Rolls-Royce Spey/Tay, most of component repair, all current engine testing, and Rolls-Royce accessory, with a bargaining unit workforce of approximately 150 employees.

Tr. 16-61; Ex. GC-5(a); GC-16.

The announcement further stated that Airmotive would “continue meeting with union representatives about the transition and how this could impact you,” and that everyone was encouraged to be aware of openings at other Dallas Airmotive locations and to make their interest known in any such openings by applying. Ex. GC-5(a). After the memorandum was issued, Airmotive moved the engines and associated component repair work to Heritage Park, and moved the PT6 work, with the exception of most component repair and test, to Hangar C. Tr. 161.

In 2014, Allen, as General Manager of the Forest Park operation, held “all-hands meetings” almost every month. Tr. 239. In these meetings, Allen stated that Airmotive did not know where the Rolls Royce line at Forest Park would be moved, that the different engine lines and the work being done at Forest Park would be moved across the Company's network, that the Pratt jets would be relocated to Heritage Park, that the PT6 work would be relocated to Love Field, and that the JT15D, PW300, and PW500 work would be moved to Heritage Park. Tr. 240-42. In an all-hands meeting held in March or April 2014, Allen announced that the Company

had found a site at the DFW Airport that would house the test cells and the Rotorcraft Center of Excellence. Tr. 242.³

D. The 2014 Closure Agreement and Layoff of One Third of the Forest Park Bargaining Unit

On February 14, 2014, the parties executed a *Forest Park Facility Closure Agreement (2014 Closure Agreement)* regarding Phase I of the closure. The 2014 Closure Agreement was signed by Huddleston, Blaine and LeFlore for the IAM, and by Madireddi and Daniel for Airmotive. Tr. 135-36; Ex. GC-13. The 2014 Closure Agreement provided for a voluntary separation plan, for which approximately 130 employees were eligible to apply. Tr. 136; Ex. GC-13, p. 2.

During these 2014 negotiations the Union did not agree to cease representing employees or otherwise waive any representational rights, and there was no discussion of any plan by Airmotive to consolidate its operations at a single facility. Tr. 136-37. By this point in the closure process, the Company had stated that Forest Park employees would have to bid and apply for jobs at either Heritage Park or Love Field. Tr. 137. Since Airmotive had spent a substantial amount of money to renovate Love Field, the Union negotiating committee understood that unit employees at Forest Park would be split into separate groups and assigned to Love Field and Heritage Park, and that all transferred employees would remain at those facilities indefinitely. Tr. 137.

Huddleston recalled that when the IAM representatives met with the Company in early January 2014, it was clear there were going to be layoffs. Accordingly, at that time the Union's objective was to ensure that Forest Park employees were adequately taken care of and protected through effects bargaining. Tr. 166. Airmotive drafted the 2014 Closure Agreement – including

³ All communications in all-hands meetings and through the Company's Yammer electronic communications system are distributed only to employees, and not to any non-employee Union representatives. Tr. 309.

its intended accommodations for affected employees -- and the Union had very little input in the terms of the document. Tr. 167-169; Ex. GC-13. Although there was no negotiation with the Union before the document was drafted regarding wages or employee benefits, Huddleston signed the agreement because represented employees were losing their jobs and the Union was seeking to get any available concessions or protections for them. Tr. 169.

By letter from David Daniel to Paul Black dated February 28, 2014, Airmotive presented formal notice to the IAM that there would be a permanent layoff of approximately 90 employees at Forest Park beginning April 28, 2014 and ending by May 12, 2014, less the number of employees who would accept the Company's voluntary separation offer or obtain a transfer to another DFW area Airmotive location.⁴ Tr. 43; Ex. GC-2.

Attached to Daniel's February 28 letter was a *WARN Notice* listing all affected jobs, the names of the workers then holding those jobs, and the anticipated schedule of job losses. Ex. GC-2. Since Huddleston had previously briefed him on the closing of Forest Park, Black was not surprised to receive the notice, and he hoped that a substantial number of IAM members at Forest Park would obtain jobs at other Airmotive sites so that the Union might have an opportunity to organize those sites at a later time. Tr. 44-45.

The Company sent a second letter and *WARN Notice* to Black referencing the layoff of an additional three employees on March 7, 2014, bringing the total number of employees given layoff notices to 93. Tr. 45, 164-65; Ex. GC-3.

In January 2014, there were approximately 280 bargaining unit employees at Forest Park, of which approximately 240 were IAM members. Tr. 163, 192-93. Thus, the layoff of these 93

⁴ Huddleston recalled that 20-30 employees with a lot of longevity between them signed the offered voluntary separation agreement, enough that Airmotive had to increase the available pool of money for the program. Tr. 169.

employees, one-third of the bargaining unit, and the substantial loss of dues-paying members of the Union was a major financial loss to Local Lodge 2251.⁵ Tr. 162-63.

There were no further discussions in 2014 between the IAM and Airmotive about the transition of work from Forest Park to other locations. Tr. 170. Phase I of the Forest Park closure was not completed by June 2014, the expected date of completion set forth in the January 15, 2014 notice to employees of the impending closure. Tr. 163-64; Ex. GC-16.

E. The 2015 CBA and Facility Closure Agreement

In March 2015, the IAM and Airmotive conducted the first discussions since January 2014 in order to negotiate a new collective bargaining agreement. Tr. 76, 171-72. Huddleston, Blaine and LeFlore comprised the Union Negotiating Committee, and Huddleston was the spokesperson. Tr. 76, 138, 171. Airmotive's Negotiating Committee included Madireddi, Daniel, Allen and Stephanie Hanes, Manager of Human Resources. Tr. 76, 138. Approximately ten negotiating sessions were held. Tr. 77-78.

The first negotiation session lasted three to four hours. Tr. 77, 171-72. Madireddi opened the meeting by informing the Union representatives that Airmotive had purchased a twenty-acre site at DFW Airport located approximately 10 miles from Forest Park for a new test cells facility and that the Forest Park facility would be closed. Tr. 127-28, 172-73, 138, 315. Airmotive officials explained that because noise was the principal reason for the decision to leave Forest Park, the Company would move the test cells to the DFW Center and also would build a *Rotorcraft Center of Excellence* at the new facility. Tr. 139.

Huddleston understood the importance of Madireddi's announcement, and he asked several questions as to whether the Forest Park unit work would be relocated to the new DFW

⁵ Although not all 93 bargaining unit employees referenced in Daniel's February 28 and March 7 letters and WARN Notices were ultimately laid off since approximately fifteen employees obtained jobs at Heritage Park, all were removed from the bargaining unit. Tr. 162-63, 205.

Center. Huddleston also asked Madireddi for recognition of the Union at the DFW Center. Tr. 78-80, 172-73. Madireddi said “that the work wasn’t necessarily all going to the DFW Center. It could be dispersed to other locations in the DFW area and that they would not recognize the Union, because wherever the work went, it would be going to a non-union facility.” Tr. 78. Madireddi was unable to provide a timeline for the closure of Forest Park, but he gave the impression that it would be in the near future. Tr. 80, 173, 179.

When the IAM learned during contract negotiations that the Company had acquired land for a new DFW Center and that it would close Forest Park, the Union representatives demanded to make the 2014 Closure Agreement part of the negotiations. Tr. 177. At that time the Union believed that Airmotive would not hire the majority of Forest Park employees and that the Forest Park employees who would obtain jobs would be placed in extant unorganized facilities where they would be in a minority. Tr. 177-78.

Huddleston requested Union recognition at the DFW Center numerous times, but the Company always refused. Tr. 245-46. When the IAM asked to be recognized as representative of employees at the new DFW facility for which Airmotive had purchased property to house the new test cell facility, Madireddi replied that the Company could not extend recognition because there would be employees at the new facility who had transferred from other sites, the Forest Park employees would be hired to fill certain jobs, and not all Forest Park employees would be hired there as some might be placed at Heritage Park or Love Field. Tr. 174.⁶ Madireddi also stated that the Union would not have any input or involvement at the DFW Center because the Rotorcraft operation at the DFW Center would be a new product line. Tr. 139.

⁶ Forest Park was the Airmotive facility that had performed test cell operations; approximately 22 unit employees worked in the test cells at Forest Park. Tr. 175. Huddleston had heard that the Neosho, Missouri facility, which did test cell testing for rotor engines and turbo engines for the helicopters, was closing, and Madireddi said that the Missouri employees would be moved to the DFW site first. Tr. 175.

On August 3, 2015, the IAM and Airmotive entered into a *Forest Park Facility Closure Agreement* (2015 Closure Agreement) “regarding the transition of bargaining unit work out of the Forest Park location between now and complete facility closure.” Ex. J-25. The 2015 Closure Agreement does not reference the DFW Center facility or otherwise reference the relocation of the Forest Park operations to a single facility. Ex. J-25. Instead, the agreement states that certain aspects of wages, benefits, and other policies, practices, and procedures will follow the practice “at the location where the work will move,” and further states that affected employees “shall be given priority consideration for positions associated with work transferred out of the facility to other facilities in the DFW Metroplex.” Ex. J-25

The IAM did not participate in drafting the 2015 Closure Agreement. Tr. 178. Rather, the Company drafted and presented the document to Union representatives together with the employer’s best and final offer regarding the new CBA. Tr. 178. None of the Union’s ideas, suggestions, or requests were incorporated in the 2015 Closure Agreement. Tr. 178-79. The 2015 Closure Agreement does not address job security, rules of conduct, discipline and discharge procedures, seniority, hours of work, shift schedules, reporting and call-back pay, temporary assignments, job selection, promotions, health and safety, union dues checkoff, or the appointment, location and access of Union representatives. None of these topics were even discussed during negotiations for the 2015 Closure Agreement. Tr. 179-80. Had Black known that Airmotive was planning to relocate the entire bargaining unit from Forest Park to a single new location, rather than disburse the employees and work operation to multiple locations, he would not have instructed Huddleston to engage in effects bargaining with the employer. Tr. 59-60.

Agreement was also reached regarding a 2015-2018 CBA, which was then ratified by the members, became effective March 23, 2015, and remained in full force and effect until March 23, 2018. Ex. J-27, p. 42. During the CBA negotiations and effects bargaining that took place in 2015, the Company admittedly never informed the Union that it planned to consolidate the Forest Park, Love Field, and Heritage Park operations at the DFW Center. Tr. 245. Madireddi told IAM representatives “that the only two things that were destined for the DFW Center at that time [were] the Rotorcraft lines⁷ and all the testing work.” Tr. 78, 174-75.⁸ At that time nothing more was said about the PT6 or the Pratt Jet Lines. Tr. 79. Madireddi stated that Forest Park employees would not necessarily keep their jobs, and they would have to apply and interview for new jobs at other facilities in the same manner that other employees did when two product lines were moved from Forest Park in 2014. Tr. 79, 108, 120.

When asked during the March 2015 negotiations, Madireddi expressly stated that the Heritage Park and Love Field facilities would not be closed. Tr. 173. Indeed, Airmotive had recently spent several million dollars to renovate the Love Field facility before moving the PT6 line to that location, and had also recently spent approximately two million dollars to add a mezzanine at Heritage Park. Tr. 108, 120-21.⁹ Airmotive still has a multi-year lease at Heritage Park that does not expire until 2021. Tr. 108-09, 285.

David Daniel admitted that when the parties negotiated the 2015 Closure Agreement, the Union could not have known that Airmotive intended to consolidate all facilities at some future time. Tr. 398. Black reviewed the 2015 Closure Agreement before it was executed, and he

⁷ Rotorcraft is a type of turbine engine that powers mainly helicopters. Tr. 78-79.

⁸ The testing facility is where all engines that are worked on, overhauled, and repaired are tested, which is a very noisy process with a lot of vibration. Tr. 79.

⁹ The mezzanine was later moved from Heritage Park to DFW Center. Tr. 121-22.

understood its reference to “other facilities in the DFW Metroplex” to be a reference to the two existing DFW area locations, Heritage Park and Love Field. Tr. 61-64. He never received any notice or other communications from Airmotive stating that unit employees would be given priority consideration for positions at the DFW Center only. Tr. 65. When Black read the 2015 Closure Agreement, he was not even aware that the DFW Center was planned. Tr. 70.

Blaine agreed that IAM officials would not have signed the 2015 Facility Closure Agreement had they known that the entire bargaining unit would be relocated to the DFW Center. Tr. 96. Had Airmotive disclosed to the IAM that the entire unit would be moved to the DFW Center, the IAM would have demanded continued recognition of the Union with respect to unit employees at the new facility. Tr. 96-97.

F. Over the Course of 2016, Airmotive Moves Its Forest Park Operations and Most Unit Employees to the DFW Center

Beginning in June and continuing through September 2016, Airmotive took Forest Park employees in buses to the DFW Center for tours of the new facility. Tr. 140, 149-40, 328. LeFlore testified about his tour experience. He saw lines taped on the floor that showed where different areas would be, and except for the 15D engine line, which had previously been moved from Forest Park to Heritage Park, all of the lines indicated Forest Park operations, including the machine shop, the rework area, the Spey line, and the paint shop. Tr. 140-42. He does not recall seeing the Rotorcraft area. Tr. 142. Prior to seeing the taped lines, LeFlore was under the impression that only test cell employees were going to be at that location, so he was surprised to see the indicated product line from Heritage Park. Tr. 142. While on the tour, no Airmotive manager or representative ever stated represented to him or other employees that all three of the DFW area facilities would be consolidated in a single facility. Tr. 150.

In June 2016, Huddleston heard that Airmotive were transferring employees from Forest Park to what he believed were several locations, and in response he started obtaining employee signatures on union authorization cards. Huddleston anticipated petitioning for an election if the Union obtained authorization cards from a substantial percentage of employees at either Heritage Park or Love Field. Tr. 182-83.

On June 20, 2016, Blaine was one of 187 Forest Park employees, including Jackson, Andrews and LeFlore, who received a letter from Stephanie Hanes notifying them that they would be “relocating to the new DFW Center.” Tr. 89-91, 463-64; Ex. J-29. Hanes letter to Blaine -- which is substantially similar to the other 186 letters other than differences as to transfer date, job title, supervisor, and hourly rate -- stated in part as follows:

We are pleased to confirm you will be relocating to the new DFW Center in the role of Materials Specialist Team Leader. You will continue to report to Ed Muccoli, Operations Manager. We anticipate your transfer date will be 12/19/2016; however, any changes to that date will be communicated to you as soon as possible.

Once you officially transfer to the DFW Center, your hourly base rate will be \$23.86. Please note that this rate may be adjusted at a later date to properly reflect any applicable automatic step increases, longevity differential increases or for obtaining a power plant differential, all in accordance with the collective bargaining agreement.

This letter is not a contract of employment, expressed or implied, or a promise of employment for any specific term, and does not alter the “at will” nature of your employment with Dallas Airmotive.

Tr. 80-81; Ex. J-29, p. 6.¹⁰ See also Tr. 128-29.

The 187 letters (*Transfer Letters*) were all dated June 20, 2016, stating various transfer dates to the DFW Center during the period of September-October-November-December 2016, and each contained a signature block for the employee to sign acknowledging that he or she had

¹⁰ Rather than being transferred to the DFW Center on December 19, 2016 as stated in the letter, Blaine was actually transferred to the DFW Center in October, from that point working only four to five hours per week at Forest Park and going back and forth between the two facilities. Tr. 81-82.

read and understood the Transfer Letter. Tr. 89-91; 316, 355-56; Ex. J-29. The employee witnesses testified that the transfers actually occurred later than the dates stated in the Transfer Letters. Tr. 128-29, 356. For example, although LeFlore's anticipated transfer date was September 26, 2016, he did not actually begin working at the DFW Center until September 2017. Tr. 128-29; Ex. J-25, p. 95. From September 26, 2016 to September 2017, he continued to work at Forest Park. Tr. 129.

At a July 2016 all-hands meeting, Airmotive announced to the unit employees that it would move all product lines to the DFW Center. Tr. 327. That was the first statement by management that all facilities in the DFW area would be consolidated at a single facility at some point. Tr. 329. An employee asked Max Allen if the Union also would go to the DFW Center, and the General Manager replied no, that the DFW Center would "be an at-will shop." Tr. 328-29.

After the July 2016 all-hands meeting, Jackson informed Huddleston that all unit employees would be transferred to the DFW Center. Tr. 330. Jackson's impression was that Huddleston was previously unaware of the Company's plan to consolidate all operations in one facility. Tr. 330.

Huddleston asked the Company to allow shop employees and a handful of other local union representatives to be covered by the CBA until it expired and Madireddi agreed. Tr. 92-93, 466-67; Ex. R-14. As of January 2017, there were approximately 30 bargaining unit employees remaining at Forest Park, comprised of approximately 22 test cell employees, maintenance personnel, and local union officers. Tr. 394, 465-66. Madireddi testified that in mid-2016 he reached an agreement with Huddleston, as employees were moving out of Forest

Park, that if local union officers transferred to the DFW Center they would remain in the unit for the purpose of administering the CBA at Forest Park.

In November and December 2016, Blaine informed Huddleston that most of the unit employees had been transferred to the DFW Center. Tr. 112. Airmotive moved the work and the employees who performed that work together. Tr. 113. Blaine testified that it was “[p]retty much, pick up your work, pick up your workstation and move it. You move with it.” Tr. 113. The same unit employees who had performed the work at Forest Park were performing the same work at DFW Center in January 2017. Tr. 113.

The CBA expired by its terms in March 2018 and is no longer applied to any employees at the DFW Center. Tr. 94; Ex. J-28. The October 2016 seniority list reflects there were 153 bargaining unit employees at Forest Park. Tr. 91-92; Ex. GC-12. As of December 2017, and as of the date of the hearing, there were no unit employees remaining at Forest Park and the Company had ceased withholding dues even though neither the IAM nor any members had requested that Airmotive stop the deduction of union dues. Tr. 93- 94, 131-32, 193-94, 319, 358.

Work still being performed at Heritage Park as of the date of the hearing included Rotorcraft,¹¹ PW100 and APU work, although the remaining hourly-rated employees at Heritage Park were expected to be moved to the DFW Center by the end of July 2018. Tr. 105, 122. Although Airmotive has represented that it will move the Rotorcraft work to the DFW Center, the work remains at Heritage Park. Tr. 105, 504-505. The *Rotorcraft Center of Excellence* that purportedly would be established at the DFW Center never came to fruition. Tr. 242. The only work processes and operations moved from Heritage Park to the DFW Center include the Pratt Jet Lines, inventory support and K2 support, and some component repair. Tr. 105. The work

¹¹ Airmotive moved Rotorcraft work from the Neosho facility to Heritage Park when the Neosho facility closed in 2015. Tr. 105.

still being performed at Love Field as of the hearing date included field service support.¹² Tr. 106. The PT6 line, which was moved from Forest Park to Love Field around January 2014, is now at the DFW Center. Tr. 106. As of March 2017, the maintenance employees worked at both the Forest Park and DFW Center facilities, but now all are working at the DFW Center because the Forest Park facility is closed. Tr. 95.

In late August or early September 2017, when the new test cells were operational, the only remaining unit employees were transferred from Forest Park to the DFW Center. Tr. 468-69. As of the date of the hearing, the only DFW area Airmotive work that had not been relocated to the DFW Center was the rotorcraft engine line, PW100 engine line, and some auxiliary power units, all of which remained at Heritage Park. Daniel claimed at hearing that such work would be moved at the end of June 2018. Tr. 476-77.

Daniel admitted that if you took a snapshot of personnel data on January 13, 2017, the majority of DFW Center employees were hourly-rated employees who had transferred from Forest Park. Tr. 508-09. He obtained a report in early June 2018 as to the number of direct labor employees who transferred to DFW Center from Forest Park in comparison to the other direct labor employees at the DFW Center. Tr. 478, 481-483; Ex. J-18. However, the data reflected in that report is tainted because a labor report for the DFW Center's Plant 38 labor report for the two-week period prior to the hearing in this case reflects employees who are purportedly working under Plant 38 but who are known to be actually working at Heritage Park, and those employees were still working at Heritage Park as of the date of the hearing. Tr. 109-112; Ex. CP-1. Some of the Heritage Park employees listed on the Plant 38 report work on Rotorcraft and some work in the PW100 and APU operations. Tr. 111.

¹² Field service support works on all manner of problems such as with engine wings or air frames. Tr. 123. They work are all over the world; a substantial number are assigned to Love Field. Tr. 123.

After the conclusion of the consolidation, Airmotive expects that Forest Park transfers will make up 42-43% of the direct labor employees. Tr. 478. In making these calculations, Airmotive is not counting those employees who first transferred out of Forest Park to either Heritage Park or Love Field before transferring on to the DFW Center as Forest Park transfer employees. Tr. 479.

G. The Bargaining Unit Remains Substantially Intact Following Relocation to the DFW Center

In a March 2017 affidavit, Max Allen stated that “[f]or the most part, the employees who transferred from Forest Park are doing the same work function at the DFW Center,” and the documentary evidence supports this statement. Tr. 291-92. A corporate chart prepared in 2017 reflects that out of 282 employees who were working in the DFW Center, 168 of them, or 60 percent, were transferred from Forest Park and only 101 were transferred from Heritage Park; the total also included 13 new hires. Tr. 13; Ex. J-2. Of the 168 Forest Park employees transferred to the DFW Center, 132 of them, or 79 percent, were placed in one of four departments where they performed the same work they had performed at Forest Park. *See* Ex. J-2. The largest amount of Forest Park employees worked in the Rolls Royce Spey/Tay department. Out of 64 total employees assigned to that department, 59 of them (92 percent) came from Forest Park. Ex. J-2. Eleven of the 12 employees (92 percent) in the accessories department, 17 of the 23 employees (74 percent) in the test cell area, and 45 of 67 employees (67 percent) in component repair were from Forest Park. Ex. J-2. Of the 25 employees identified as being placed in the Honeywell TFE 731 area at DFW Center, 23 of them were transferred from Heritage Park and only one employee was transferred from Forest Park (there was one new hire). Ex. J-2. The Honeywell TFE 731 operation had been moved from Heritage Park.

Further, of the 168 unit employees transferred to the DFW Center, 100 employees, or 60 percent, were identified as having been placed in the “same” position at DFW Center (accounting for differences in job titles), 53 were in the “all” category, and only 15, or 9 percent, had been placed in a different job. Ex. J-2. And, as of March 2017, 60 percent of the unit employees who transferred from Forest Park to DFW Center had the same supervisor. Tr. 268-70.

Kenney Jackson testified that after the relocation, he performed the same work with the same job title and same equipment (moved from the Forest Park location), and he knew of many others who were performing the same work that they had performed at Forest Park. Tr. 331, 348-49. To his knowledge there was no cross-training between Forest Park and Heritage Park employees. Tr. 331.

Similarly, Wesley Blaine testified that the job to which he transferred at the DFW Center was the same job he held at Forest Park, he retained the same hourly base rate, and he continued to perform the same work with the same employees although he did report to a different supervisor. Tr. 81-82. He is currently employed at the DFW Center as group leader of the warehouse in shipping and receiving. Tr. 72-73. As of the June 2018 hearing, seven other employees from Forest Park joined his department in addition to six employees from Heritage Park. Tr. 83. However, in January 2017, when Airmotive withdrew recognition of the Union, there were eight Forest Park employees in his department but only two Heritage Park employees. Tr. 83.

In the DFW Center warehouse, all unit employees are performing the same work that they had performed at Forest Park, including all work related to inventory and all shipping and receiving functions. Tr. 83, 87. As of January 13, 2017, there were no changes in the work

performed by the warehouse unit at DFW Center as compared to the work the employees had performed at Forest Park. Tr. 94. As of that date, there were approximately 180 employees from Forest Park and approximately 70 to 75 employees from Heritage Park at DFW Center. Tr. 95.

Blaine further testified that on December 12, 2016, the Company transferred approximately 55 employees assigned to the Rolls-Royce assembly line from Forest Park to the DFW Center.¹³ Tr. 97. Since arriving at the DFW Center, neither their work nor their supervisor has changed. Tr. 97. Until Blaine became aware that a large number of unit employees had moved to the DFW Center, he had understood that the Company would distribute the bargaining unit work to several separate facilities as Airmotive had represented in the 2015 negotiations. Tr. 98. After the relocation of all Forest Park operations and employees to the DFW Center was almost completed, Blaine realized that the Company had moved the entire unit to DFW Center. Tr. 98.

The Forest Park and Heritage Park employees in the warehouse – as well as those who work on engine lines and component repair work and have the same qualifications – all perform the same work they had performed in their former jobs at the Forest Park and Heritage Park facilities. Tr. 87-89. Airmotive transferred the entire inventory of thousands of parts supporting the Rolls Royce, test cell, and accessory shops from Forest Park to DFW Center. Tr. 83-84, 86. Although there was some new equipment in the warehouse that was a newer version of what they had used before the relocation, the Company brought much more existing equipment than new equipment into the DFW Center. *Id.*

When Fred Andrews transferred from Forest Park to the DFW Center on December 12, 2016, the remainder of the Rolls Royce product line work went with him. Tr. 365. Andrews

¹³ The Rolls-Royce assembly line workers repair and overhaul the large Rolls-Royce turbine engines, the Spey and Tay products. Tr. 97.

observed the Company move every item of equipment that was in the building at Forest Park to the DFW Center. Tr. 366. At the DFW Center, he continued to work with the same Rolls Royce mechanics and “[e]verybody was still in same departments doing the same functions.” Tr. 166. At the outset, the Company temporarily assigned a few Heritage Park mechanics to the Rolls Royce area, but they returned to Heritage Park after a few weeks. Tr. 366-67. Only one Heritage Park mechanic remained in the department by the hearing date. *Id.*

When Jim LeFlore returned to work after he had recovered from back surgery in February 2017, he worked at Forest Park in the unit represented by the IAM until he was transferred to the DFW Center in September 2017. Tr. 145. During the first two months there he had the same job title as a lead, but in early November a manager told him that he would not be a lead at the new facility even though he was performing the same work absent the lead responsibilities. Tr. 145. As a test cell mechanic LeFlore worked with the same employees he had worked with at Forest Park albeit in different teams. Tr. 146. There were approximately 10 employees who had come from Heritage Park. *Id.* LeFlore follows the same work procedures that he had followed at Forest Park, but some of the equipment he now uses is updated. Tr. 126, 147.

H. Airmotive Makes Unilateral Changes to the Bargaining Unit’s Terms and Conditions of Employment at DFW Center

Paul Black never received any written or electronic communications from Airmotive regarding the movement of work or people from Forest Park to the DFW Center. Tr. 65. Although the Company made numerous changes to the terms and conditions of employment in connection with the move to DFW Center, management did not bargain with the Union about any of the changes. Tr. 68-69. Airmotive admittedly made unilateral changes to job security, rules of conduct, discipline and discharge procedures, seniority, hours of work, shift schedules,

overtime accrual and pay, vacation leave and pay, reporting and call-back pay, temporary assignments, job selection, transfers, promotions, health and safety, union dues checkoff, and the appointment, location and access of Union representatives. Tr. 93-94, 144, 270-282, 317-19, 332-38, 345. Moreover, the employer did not conduct any employee votes or solicit employee preferences with regard to its radical changes in working conditions. Tr. 296-97.

Under the CBA there were 17 bargaining-unit job titles effective as of March 23, 2015, but at the DFW Center there were only eight “non-bargaining unit job titles.” Tr. Ex. GC-10; J-21. The names of the jobs changed but the job duties remained the same. Tr. 84-85. Airmotive explained to the Forest Park shop committee that it was going to condense the substantial number of unit classifications to bring it in line with the lesser number of non-bargaining unit titles it had at its other facilities. Tr. 85.

The former Forest Park employees are now treated as at-will employees since they have lost all job security and protections established in the CBA. Tr. 130, 149. Andrews testified that he received an employee handbook when he transferred to the DFW Center and that it established new policies and procedures, thereby supplanting the collective bargaining agreement. Tr. 367-69; Ex. J-8. LeFlore testified that he has never received an employee handbook and that he did not know what policies were in place at the DFW Center. Tr. 147. When an employee was reprimanded in writing for attendance issues in late 2017, LeFlore asked the supervisor how an employee could be “written up” when he did not know what the policies were. Tr. 147. The supervisor replied that he would provide a handbook to LeFlore and the other employee but LeFlore never received one. Tr. 147

I. Dallas Airmotive Never Notified the IAM of the Decision to Relocate the Bargaining Unit to DFW Center

Airmotive never notified the IAM of its decision to relocate the entire Forest Park operation and bargaining unit to DFW Center or of its plan to consolidate all operations at the new facility. Tr. 46-47, 53-54, 65, 117, 140-41, 392, 395-402. In 2016, Airmotive informed all employees at Forest Park, Heritage Park and Love Field that its operations would be consolidated at the DFW Center. Tr. 246-47. The Company has admitted, however, that it never notified Paul Black, Doyle Huddleston, or any other IAM officials who were authorized to take legal or administrative action to enforce the employees' statutory and contractual rights of its relocation plans. Tr. 247-48. At all relevant times Black and Huddleston were the only Union officials authorized to commence and oversee negotiations with the employer. Allen, the former General Manager, acknowledged that when the parties engaged in negotiations, the local union representatives who were employed by Airmotive were involved in the process but did not have any "final say." Tr. 247-48; *see also* Tr. 510-11. Despite this knowledge Allen did not inform Black or Huddleston of the decision to consolidate operations at the DFW Center; he did not instruct Hanes, Daniel or any other managerial agent to notify the Union; and he has no knowledge Airmotive ever presented such notice. Tr. 308-09.

Huddleston did not become aware that Airmotive would relocate the entire unit to DFW Center until late 2016 when several members, including Blaine and Jackson, informed him that most of the employees already had been transferred to the new facility. Tr. 185-86, 323-326, 348. Blaine testified that after most employees had been transferred from Forest Park to the DFW Center, he called Huddleston, told him that the entire unit had been moved, and requested the Union to take appropriate action. Tr. 98. Huddleston expressed surprise that most

unit employees had been moved to the DFW Center, and he told Blaine that he would confer with Black to discuss the IAM's options. Tr. 98.

Huddleston's account is consistent with Blaine's testimony in this regard. Huddleston testified that in November 2016, a member informed him in a phone call that there were numerous unit employees at the DFW Center. Tr. 185. Huddleston learned that all Forest Park employees had been transferred to the DFW Center except for approximately 20 employees who worked in the test cell area. Tr. 185-86. Airmotive transferred 187 unit employees to the DFW Center within a short period of time, but it failed to notify Black or Huddleston of the transfers. Tr. 186.

The Union would not have executed either the 2014 Agreement or the 2015 Closure Agreement had he known that Airmotive intended to relocate approximately 90 percent of the bargaining unit to a nearby location to perform the same work. The Company never disclosed these plans to the Union during the 2014 and 2015 negotiations. Tr. 188.

The IAM did not discover the employer's unilateral termination of dues checkoff until the Union stopped receiving the remittance of dues. Tr. 67-68. Under the 2015 CBA, the IAM had access to all represented employees at the Forest Park facility but the Company unilaterally terminated the access of Union representatives to unit employees at the DFW Center. Tr. 68.

J. Airmotive Withdraws Union Recognition on January 13, 2017

In December 2016, the IAM filed a unit clarification petition and a certification of representative petition with Region 16. Tr. 52, 183-84; Ex. J-22; R-15. Union officials filed the RC petition based on their view that the Union would prevail in an election. Tr. 63.

Paul Black testified that the IAM would have sought authorization cards from DFW Center employees without regard to whether they came from Forest Park, Heritage Park, or Love

Field. Tr. 63. After filing the RC petition, however, the Union determined that the contract bar would preclude an election at that time because a substantial majority of unit employees had been transferred to the DFW Center. Union officials realized that the IAM already represented the former Forest Park employees who were working at DFW Center. Tr. 52. The Region abated the RC petition pending the resolution of this unfair labor practice case and the Union subsequently withdrew the UC petition. Tr. 52-53.

In January 2017, only 20 or fewer of 280 bargaining unit employees remained at the Forest Park facility. Tr. 193. Once Black learned that the almost all unit work and the majority of Forest Park employees had been relocated to the DFW Center, he determined that the extant CBA should be applied and enforced. Tr. 47.

Black addressed this matter by correspondence to David Daniel dated January 9, 2017, with the subject line *Repudiation of the Union's Statutory and Contractual Rights*. Tr. 47-48; GC Ex. 4. Black noted in the letter that Airmotive had transferred more than 150 represented employees to the DFW Center where they continued to perform the same unit work, and thus there was a continuity of operations requiring application of the CBA's terms and conditions to all unit employees at both locations. GC Ex. 4. Black further stated that Airmotive had not relocated any non-union operations to the DFW Center and that the Union had never relinquished its rights under the National Labor Relations Act and labor contract. Ex. GC-4. District Lodge 776's President further asserted that "the company has repudiated the Union's status as exclusive bargaining representative, it has refused to apply the terms of the CBA at DFW Airport Center, and it has made unilateral changes with respect to overtime pay and other terms and conditions of employment." Ex. GC-4. Black concluded the letter by offering to meet

and confer with management while demanding that Airmotive “cease and desist its unlawful conduct immediately.” Ex. GC-4.

Daniel responded to Black by letter dated January 13, 2017, in which he also acknowledged his receipt of the UC Petition. Tr. 48-49; Ex. GC-5. In his letter, Daniel disputed Black’s assertions and stated that the Union had agreed during discussions between the two parties in 2015 and 2016 “that it would have no representational rights at the DFW location as a result of Forest Park employees transferring to that location.” Ex. GC-5. Daniel declined to meet and confer with Black, stating that Airmotive would address the issues “via the NLRB’s processes.” Ex. GC-5. Black had been unaware of Airmotive’s purported plan to consolidate all operations at the DFW Center until he received Daniel’s January 13, 2017 correspondence. Tr. 54.

In January 2017, Max Allen held an all-hands afternoon meeting in the Forest Park cafeteria with more than 100 bargaining unit employees that lasted approximately one hour. Tr. 99. After Allen finished addressing customary business matters, he read a prepared statement to the unit employees regarding the Union’s activities. This statement referenced the IAM’s actions of filing and then withdrawing its UC petition, and Allen then stated “that the Union was trying to recognize a number that he [Allen] just didn’t understand where they got the number from.” Tr. 99.

Blaine recalled that Allen’s prepared statement referred to the IAM’s actions as “unethical” and “un-American,” and expressed the view “that “the company would do anything in their power to stop it from happening.” Tr. 99, 294, 346. Jackson recalled that Allen claimed he had “[taken] Forest Park out of the Stone Age,” and “[taken] the chains off the doors.” Tr. 346-347.

At each all-hands meeting, management presented an update to the unit employees in attendance regarding recent developments in this labor dispute. At one such meeting held around April 2017, General Manager Higgins, who had replaced Allen, made a statement to the effect that there was no union at the Company that day, there would be no union there the next day, and there would be no union for the foreseeable future. Tr. 101-02. According to Blaine, many employees still believed they needed union representation. Tr. 103.

In addition to implementing unilateral changes to wages, hours, and working conditions, the Company has not applied the terms and provisions of 2015 CBA in other respects. In this regard, Airmotive refused to process a discharge grievance that Richard Russell, an engine maintenance technician in the Rolls Royce department, filed on November 20, 2017. Tr. 189-90, 213-15, 221-24; Ex. GC-20, GC-21. Daniel informed the Union that the Company had “no intentions of processing this grievance until the pending issues before the NLRB are resolved.” Ex. GC-21. And Airmotive has refused to process two discharge grievances that arose in the Forest Park facility. Tr. 216-21.

The dues checkoff reports in evidence for certain months over the time period in question show the precipitous decline in the number of dues-paying members, beginning with the Phase I layoffs in 2014, continuing over the course of the 2016 relocation, and then ending in the complete cessation of remittance of dues upon Airmotive’s withdrawal of recognition. The actual decline in dues paid since February 2014 is shown in the following table. There are no members remaining.

Dues Checkoff Period	Dues Payable to District Lodge 776
February 2014	\$9,899.92
March 2015	\$6,988.68
July 2016	\$6,599.36
August 2016	\$4,263.41
January 2017	\$1,068.96
June 2018	0

K. DFW Center Ambassadors Committee

When examined at hearing about the fact that employees at the DFW Center would no longer have anyone to represent unit employees, Allen disclosed that the Company had established an employees' group called the *Ambassadors* at DFW Center that "could sort of be the eyes and ears and voice of the people. If there was [sic] situations where we needed a view from the workforce, we would go to those people." Tr. 273.

Allen and Hanes created the concept of the Ambassadors (*Ambassadors Committee*) in the spring of 2016. Tr. 299. The Company did not notify the IAM about its implementation of the Ambassadors Committee and the parties never discussed the unilateral implementation of the employee organization. Tr. 298.

When Union members transferred to the DFW Center, they received a *welcome packet* that described Airmotive's DFW Center Ambassadors Committee as follows:

DFW Center Ambassadors

Your DFW Center Ambassadors (pictured below) are a team of Dallas Airmotive employees trained to help provide information, answer questions, and address any concerns you may have during the transition to the DFW Center. Visit them in person or chat with them on Yammer, Dallas Airmotive's social networking site!

Tr. 338; Ex. GC-24, p. 2. On the third page of the welcome packet is a list of the 27 DFW Center Ambassadors and the work e-mail address for each Ambassador. Ex. GC-24, p. 3. Witnesses LeFlore, Jackson, and Allen were among the 27 DFW Center Ambassadors at relevant times. Ex. C-24, pp. 2-3.¹⁴

Jackson became an Ambassador in 2016 after sending an e-mail to Hanes. He volunteered so that he could be “in the loop” as to what was going on and could then pass the message on to the employees. Tr. 339-40.

According to Jackson, the Ambassadors Committee is a group of male and female employees who volunteer “to be communicators and get information from people on the shop floor and get questions answered and just mostly informing people of the new site and the structure, the position of everything, stuff like that.” Tr. 338. In addition, if employees had questions about the area, the Ambassadors Committee would obtain the necessary information and then provide it to those who made inquiries. *Id.* The Ambassadors also had the opportunity to tour the DFW Center before all other employees who would be transferred to the facility. Tr. 340.

A manager told Jackson that the purpose of the program was to “be leaders for the people, to get information back to them, let them be aware of what’s going on every step of the way through the process.” Tr. 339. The Company selectively invited employees who were viewed as leaders and who had shown a desire to participate in a similar leadership program to be Ambassadors. Tr. 277. The Ambassadors voted on the leadership positions among themselves. Tr. 273.

¹⁴ No Ambassadors remained as of the date of the hearing, and the Company had informed employees by an e-mail that a new committee was needed shortly before the hearing began. Tr. 352.

During Allen's tenure as General Manager the Ambassadors formed a committee that met with management. Allen participated in these meetings with the Ambassadors Committee. Tr. 274. He described the employee organization as "sort of a catchall for a lot of things to partner with the workforce." Tr. 275. Each site had its own Ambassadors, but sometimes they had conference calls that included all members of the Ambassadors Committee. Tr. 340.

The Ambassadors Committee met with the employer once or twice each month to discuss issues such as safety, break times, and employee lunch options. Tr. 340. Ambassadors also presented management with individual employee concerns such as accounting errors. Tr. 276. Sometimes Ambassadors even helped management determine what shift hours were best suited for a particular team. Tr. 280-81.

When asked whether the Ambassadors Committee at Forest Park engaged with employees regarding their concerns about working conditions, Allen replied "[y]es." Tr. 298. They discussed safety on a daily basis and noise levels were another issue they might have addressed. Tr. 275.

The Ambassadors had the opportunity to tour the DFW Center before all other employees who would be transferred to the facility. Tr. 340.

During the first conference call meeting in September 2016, Jackson and a Heritage Park Ambassador got into a contentious discussion about unionization. Tr. 341, 351. Aware that Jackson was a local union officer, the Heritage Park Ambassador, claiming to be speaking on behalf of all employees at Heritage Park, said they did not want a union at that facility. Tr. 341, 351. Hanes subsequently told Jackson that Allen had instructed the Ambassadors at all facilities not to discuss unionization at their meetings because they were all leaders and unionization was

not an appropriate subject of discussion. Tr. 342, 351. Allen later confirmed to Jackson that he had addressed the matter with the Ambassadors. Tr. 342, 351-52.

A team of Ambassadors conducted tours for other employees at the new DFW Center. Tr. 343. Jackson led seven or eight two-hour tours of the facility's interior and exterior, and showed employees where various engine lines would be located. Tr. 343. The tours included a mix of employees from all three facilities. After every tour that Jackson led, the Heritage Park and Love Field employees told Forest Park employees they did not need a union. Tr. 343-44.

In light of the testimonial evidence regarding the Ambassadors Committee, Counsel for the General Counsel orally moved to amend the Complaint to allege that Airmotive has violated Section 8(a)(2) of the Act by establishing a labor organization dominated by the employer. The Administrative Law Judge accepted the amendment. Tr. 426-27.

IV. Argument and Authorities

A. Dallas Airmotive Violated Sections 8(a)(5) and (1) by Withdrawing Recognition of the IAM

At the outset, the IAM does not contend that Dallas Airmotive lacked legitimate business reasons for building the DFW Center and relocating its Forest Park operations there. Nor does the IAM contend that the decision to relocate the Forest Park operations to DFW Center was driven by anti-union animus. Instead, Airmotive's unlawful withdrawal of recognition of the Union upon relocation of the entire operation and bargaining unit to the new facility was a *crime of opportunity*. The evidence shows that having made the legitimate decision to relocate the Forest Park operations to the DFW Center, Airmotive seized upon a perceived opportunity to get rid of the Union. By failing to recognize and bargain with the IAM after the relocation of the entire unit, Airmotive violated Section 8(a)(5) and (1) of the Act.

The Counsel for the General Counsel and Union introduced compelling evidence establishing that Airmotive knew during its 2014 and 2015 negotiations with the Union that the Company planned to relocate the entire Forest Park operation to the DFW Center instead of disbursing the work and personnel among several DFW area locations. The Company denies it had made this decision by 2015 (*see, e.g.*, Tr. 301), but the General Counsel and Union have adduced substantial circumstantial evidence that the Company had an established plan to relocate the Forest Park operations to the DFW Center during the 2014 and 2015 negotiations but withheld that information from the Union to its advantage.

The hearing record paints a vivid picture of the Company's deceptive conduct during the 2014 and 2015 negotiations. But resolution of the question as to when Airmotive developed its plan to relocate the entire bargaining unit to DFW Center is not necessary for the Administrative Law Judge to determine that the Company unlawfully withdrew recognition from the Union.

1. The Company Unlawfully Withdrew Recognition of the Union on January 13, 2017

It is, of course, unlawful for an employer to refuse to bargain collectively with the representative of its employees. 29 U.S.C. § 158(a)(5). Accordingly, an employer who withdraws withdraw recognition of a union during the term of a collective bargaining agreement violates the Act. *Westwood Import Co.*, 251 NLRB 1213, 1213 (1980), *enfd.* 681 F.2d 664 (9th Cir. 1982); *Syscom Intern., Inc.*, 322 NLRB 539 (1996); *Dominick's Finer Foods*, 308 NLRB 935 (1992).

The same rules usually apply in the case of a plant relocation. After relocating its operations, an employer violates Section 8(a)(5) if it fails to recognize and bargain with the established representative unless the relocation fundamentally changes the employer's operations. *Leach Corp. v. NLRB*, 54 F.3d 802, 810 (D.C. Cir. 1995); *NLRB v. Rock Bottom Stores, Inc.*, 51 F.3d 366, 370 (2d Cir. 1995); *Westwood Import Co., Inc. v. NLRB*, 681 F.2d 664,

666 (9th Cir. 1982); *NLRB v. Marine Optical, Inc.*, 671 F.2d 11, 16 (1st Cir. 1982). Where an employer's relocation leaves the employees' job status and work essentially unaltered, an employer cannot abrogate the employees' rights to union representation through the relocation. Otherwise, an employer could eliminate the union whenever it decides to relocate. *See Molded Acoustical Prods., Inc., v. NLRB*, 815 F.2d 934, 940 (3d Cir. 1987).

In late 2016, District Lodge 776 officials became aware that the entire bargaining unit was being relocated and they began investigating the matter. By January 2017, the Company had substantially completed the relocation of its Forest Park operations and the entire bargaining unit to the DFW Center. By letter dated January 7, 2017, Paul Black, President of District Lodge 776, demanded that Airmotive continue to recognize the Union and to abide by its contractual obligations. By letter from David Daniel to Black dated January 13, 2017, the Company withdrew recognition of the Union and repudiated its obligation to apply the provisions of the extant CBA to unit employees at the DFW Center. Tr. 48-49; Ex. GC-5. Airmotive violated Section 8(a)(5) and (1) of the Act by withdrawing recognition. *Westwood Import Co.*, 251 NLRB at 1213 (1980).

Further, the 2015 CBA expired by its terms in March 2018. After the contract expired, the Union is still presumed to have majority support, but the presumption is rebuttable. The employer may rebut the presumption and withdraw recognition if it can show that the Union, in fact, no longer has the support of a majority of unit employees. *Champion Home Builders*, 350 NLRB 788 (2007); *Levitz Furniture Co. of the Pacific*, 333 NLRB 717 (2001). But Airmotive presented no evidence rebutting the presumption of majority support and there is no such evidence in the record. Accordingly, the IAM is still presumed to have majority support of the unit employees at DFW Center.

2. When an Employer's Relocated Operation is a Continuation of the Former Operation, the Employer Must Continue to Recognize and Bargain with the Union

Following an employer's relocation, the union is entitled to continued recognition where the same operations are performed at the new site. *Rock Bottom Stores, Inc.*, 312 NLRB 400, 402 (1993), *enfd.* 51 F.3d 366 Cir. (2d Cir. 1995); *Harte & Co.*, 278 NLRB 947, 948 (1986). In *Harte*, the Board established a two-pronged test to determine if an existing contract and bargaining relationship remains intact after a relocation of a company's operations to a new facility: (1) the operations are substantially the same as those at the old facility, and (2) the transferees from the old facility constitute a substantial percentage of the new plant's employee complement. *Rock Bottom*, 312 NLRB at 400; *Harte*, 278 NLRB at 948 (1986) (citing *Westwood Import Co.*, 251 NLRB 1213, 1214 (1980), *enfd.* 681 F.2d 664 (9th Cir. 1982)).

The *substantial percentage* requirement is met if the transferees from the former facility constitute at least approximately 40 percent of the new facility's employee complement. *Gaylord Chemical Co.*, 358 NLRB 525, 527 (2012) (*Gaylord I*), *adopted*, *Gaylord Chemical Co., LLC*, 361 NLRB 771 (2014) (*Gaylord II*), *enfd.* 824 F.3d 1318 (11th Cir. 2016). The date for calculating whether the transferees constitute a substantial percentage of the new facility's employee complement is "the date the transfer process was substantially complete." *Harte*, 278 NLRB at 949.

3. The DFW Center Operations Are Substantially the Same at Those at the Forest Park Facility

The testimonial and documentary evidence strongly demonstrate the continuity of Forest Park operations at DFW Center. As of January 13, 2017, the date of the Company's official notice withdrawal of recognition, a vast majority of Forest Park employees had already transferred to the DFW Center where they were performing substantially the same work with

almost all of the same personnel. In early 2014, Airmotive reduced the number of bargaining unit employees from approximately 280 to approximately 187 by effecting layoffs. By Transfer Letters of June 20, 2016, the Company notified all remaining unit employees that they would be transferred to the DFW Center at various times during the remainder of 2016. Ex. J-29. The relocation of all Forest Park product lines and equipment, together with almost all unit employees, to the DFW Center was substantially complete by January 13 2017 as only 30 or fewer unit employees remained at Forest Park.

“The [continuity] inquiry centers on whether the employees who have been retained will understandably view their job situations as essentially unaltered.” *Nat’l Labor Relations Bd. v. Gaylord Chem. Co., LLC*, 824 F.3d 1318, 1325 (11th Cir. 2016). All unit employees performed the same work, applied the same work processes, used the same or updated equipment, and worked in the same departments as they had prior to the relocation. There have been no significant changes in the nature of the jobs or the functions of the employees in the bargaining unit. There has been minimal cross-training between unit employees and employees who transferred from Heritage Park or Love Field. And, with few exceptions, the supervisors of unit employees at DFW Center are the same supervisors who worked at Forest Park. There is no question that the unit employees view their job functions and duties as essentially unaltered at DFW Center.

4. A Substantial Percentage of Forest Park Employees Transferred to the DFW Center

The *substantial percentage* requirement is met “if the transferees from the old facility constitute at least approximately 40 percent of the new facility’s employee complement.” *Gaylord I*, 358 NLRB at 527 (citing *Rock Bottom Stores*, 51 F.3d at 402, and *Harte*, 278 NLRB

at 527). Daniel, Vice President of Human Resources, admitted that the majority of employees at DFW Center as of January 13, 2017, had been transferred from Forest Park. Tr. 508-09.

Airmotive may foist the erroneous notion that the relevant time period with respect to determination of the percentage of unit employees in the DFW Center work force is the percentage of Forest Park is June-July 2018 when, according to Daniel, the Company will complete its relocation of all operations to the DFW Center. He estimated that even when all employee transfers and new hire decisions have been completed, former Forest Park employees will comprise at least 42 percent of all direct labor personnel, which is still greater than the 40 percent threshold. Tr. 478.

5. All Production and Maintenance Employees Who Are Newly Hired or Who Transferred from Non-Union Facilities Are Accreted to the Existing Unit

An accretion occurs when new employees, or present employees in new jobs, perceived to share a sufficient community of interest with existing unit employees, are added to an existing bargaining unit without being afforded an opportunity to vote in a union election. The accretion doctrine thus assigns to the accreted employees the existing unit's choice of bargaining representative. *NLRB v. Superior Protection, Inc.*, 401 F. 3d 282, 287 (5th Cir. 2005); *Baltimore Sun Co. v. NLRB*, 257 F.3d 419, 427 (4th Cir.2001). "Essentially, the doctrine is designed to preserve industrial stability by allowing adjustments in bargaining units to conform to new industrial conditions without requiring an adversary election every time new jobs are created or other alterations in industrial routine are made." *NLRB v. Stevens Ford, Inc.*, 773 F.2d 468, 473 (2d Cir. 1985). Accordingly, the Board will accrete employees to an existing unit without an election "when the additional employees have little or no separate group identity and thus cannot be considered to be a separate appropriate unit and when the additional employees share an

overwhelming community of interest with the preexisting unit to which they are accreted.” *Superior Protection*, 401 F.3d at 288 (quoting *Safeway Stores, Inc.*, 256 NLRB 9818 (1981)).

But the Board will not permit an accretion if the size of the group to be accreted overshadows the number of employees in the existing unit. *Id.* at 288-89.

Majority status is the critical element in an accretion context but the margin of majority does not matter. *Cf. Geo v. Hamilton*, 289 NLRB 1335, 1339 (1998) (no accretion where two represented employees did not outnumber two unrepresented employees). The relevant time for assessing the majority status is the time when the request for recognition is made. In this case, Forest Park employees were the clear majority at the time of the request for recognition in January 2017 and have remained the majority at all times reflected in the record.

As of January 23, 2017, Forest Park employees comprised 147 of 203 production and maintenance employees (72.4 percent) at DFW Center. *See* Jt. Ex. 23. As late as September 2017 (*see* Jt. Ex. 2 and Jt. Ex. 26), Forest Park employees comprised approximately 60 percent of the workforce (168 of 282).

Airmotive apparently altered its personnel records to obscure the actual percentages. Joint Exhibit 18 reflects that Forest Park employees comprise 154 of 308 total employees (50 percent) in late 2018. But at least 10 employees listed in Joint Exhibit 18 as “new hires” or Love Field transferees are shown in other corporate records (Joint Exhibit 23 for example) as Forest Park transferees. Additionally, employees who were hired after the relocation to DFW Center should have been included in the accreted unit and cannot be used to dilute it years later. Although the 2018 percentages are irrelevant to the resolution of this case, it is nevertheless a compelling fact that Forest Park employees continue to comprise the majority of the DFW Center workforce.

Additionally, the vast majority of employees who transferred from Forest Park to DFW Center experienced no changes in their jobs upon relocating DFW Center. They performed the same work, on the same product lines, with essentially the same equipment, under the same supervisors, and in the same work groups. The only group that is clearly separate and distinct from the Forest Park employees are the employees who work on the Honeywell and Pratt lines. As of January 23, 2017, there were approximately 30 such employees. There were 72 Honeywell and Pratt line employees by September 2017. Forest Park employees comprised at least 50 percent or more of the employees in every other department in January 2017.

Under these circumstances it would be feasible to exclude the Honeywell and Pratt line employees from the unit. Given the Forest Park employees majority status, however, functional integration is not assessed. Accordingly, the Company should recognize the Union as the representative of all production and maintenance employees including the Honeywell and Pratt line employees.

6. The CBA's Description of the Bargaining Unit as Production and Maintenance Employees Employed at the Forest Park Location Does Not Affect Airmotive's Duty to Recognize and Bargain with the IAM

Airmotive asserts that the Union's representational and bargaining rights do not extend to any employees at the DFW Center because the parties' 2015 CBA defines the bargaining unit as "all production and maintenance employees employed by the Company at its facilities located at 6114 Forest Park Road, Dallas, Texas." Ex. GC-28, art. 1. The Board unequivocally rejected the same argument in *Westwood* and adopted the Administrative Law Judge's conclusion that, "The language contained in the contractual recognition clause is not a geographical limitation, but merely the parties' descriptive recitation of the physical location at the time of the negotiations." *Westwood Import Co.*, 251 NLRB 1213, 1223 (1980). *See also Los Angeles*

Marine Hardware Co. v. NLRB, 602 F.2d 1302, 1306 (9th Cir. 1978) (language in contract's preamble stating that it was entered into "on behalf of [the employers'] operations located at San Pedro, California and vicinity" was not a geographical limitation); *King Soopers*, 332 NLRB 32, 38 and n. 2 (2000), *enfd.* 254 F.3d 738 (10th Cir. 2001) ("Similarly, in collective-bargaining agreements it is the usual practice, particularly in single location units, to list the address of the employer's plant or store. I know of no case where the Board found that to be a waiver of representation rights at a replacement facility.").

The waiver of statutory rights "must be clear and unmistakable." *King Soopers*, 332 NLRB at 32. As in *Westwood*, the language describing the Airmotive bargaining unit was adopted from the NLRB's Certification of Representative (issued in 1966). There is no evidence whatsoever that Airmotive and the IAM intended the CBA's reference to the Forest Park location to constitute a geographical limitation or to be anything other than a descriptive recitation of the plant's physical location at the time of negotiations. *Westwood*, 251 NLRB at 1223.

7. The Ten Mile Distance Between Forest Park and DFW Center Is Not Significant

The DFW Center is located approximately ten miles from the Forest Park facility. This distance does not impair or affect the Union's right to enforcement of its representation and bargaining rights. There are numerous Board decisions holding that union recognition continued following an employer's relocation of operations to a plant located a substantial distance from the former plant. Indeed, in the recent *Gaylord* decision, the Board found there was a substantial continuity of operations despite the fact that the employer relocated its operations to a new facility 200 miles away in another state. *Gaylord I*, 358 NLRB at 527.

8. The IAM Did Not Disclaim Its Statutory Right to Representation or Waive Its Right to Bargain Over All Terms and Conditions of Employment During the 2015 Plant Closure Negotiations

Dallas Airmotive asserts that the IAM relinquished or waived its right to represent employees transferred from Forest Park to the DFW Center when it executed the 2015 Closure Agreement, which provides generally that “[a]ll other policies, practices, and procedures at the location where the work will move will apply.” Ex. J-25. The Union executed the 2015 Closure Agreement in reliance on the Company’s representations that Forest Park’s employees and work would be disbursed among several facilities in the DFW area. At hearing the Company admitted the IAM did not know in 2015 that the entire bargaining unit and all Forest Park operations would be relocated to the DFW Center. Tr. 395-400. Moreover, the 2015 Closure Agreement expressly provides that all employees would be considered for jobs in “other facilities [plural] in the DFW Metroplex.” Ex. J-25.

It is undisputed that the parties never discussed the relocation of the entire bargaining unit to DFW Center in 2015 or any other time. And, as Black testified, the IAM has never relinquished or disclaimed its representational rights in any respect. Tr. 55.

Further, it is axiomatic that waiver is the intentional relinquishment of a known right. Any waiver of bargaining rights must be clear and unmistakable. *Boeing Co.*, 363 NLRB No. 363 (2015). The Board continues to hold that for bargaining history to constitute a waiver, the issues in question must have been “fully discussed and consciously explored” during negotiations. *Olean Gen. Hospital*, 363 NLRB No. 62 (2015).

In this regard, the 2015 Closure Agreement does not address – and the parties never discussed – the specific matters of job security, rules of conduct, discipline and discharge procedures, seniority, hours of work, shift schedules, overtime accrual and pay, vacation leave

accrual and pay, reporting and call-back pay, temporary assignments, job selection, promotions, health and safety, union dues checkoff, and the appointment, location and access of Union representatives. Surely the IAM has not clearly and unmistakably waived its right to bargain over these matters. The vague statement in the 2015 Closure Agreement that the “policies, practices, and procedures at the location where the work will move will apply” is insufficient to constitute a clear and unmistakable waiver. This standard “requires bargaining partners to unequivocally and specifically express their mutual intention to permit unilateral employer action with respect to a particular employment term, notwithstanding the statutory duty to bargain that would otherwise apply.” *Provena St. Joseph Med. Ctr.*, 350 NLRB 808, 811 (2007). *See also Parsons Electric*, 361 NLRB No. 20 (2014), *enfd.* 812 F.3d 716 (8th Cir. 2016).

9. The Employer’s Consolidation Plan Defense Is Baseless

Dallas Airmotive’s consolidation plan defense to the statutory bargaining obligation is groundless. The Board has held that an employer is not obligated to bargain in the interim with a union when it demonstrates “objective factors to establish that it was following some well-defined plan and/or timetable for full integration of its operations” which would result in the unit in question’s loss of identity. *AG Communications*, 350 NLRB 168 (2007); *Northland Hub*, 304 NLRB 665, 677 (1991). In this case, however, the evidence fails to show any defined plan or timetable for consolidation of all its DFW area operations and employees in the DFW facility at the time of the withdrawal of recognition in January 2017.

The record demonstrates that Airmotive had relocation plans that were to be implemented in phases. Phase One was designated *Sea Change*. The Company’s witnesses acknowledged that the purported relocation plans were fluid and even chaotic during Phase One.

In this connection, Madireddi made the candid admission that Airmotive did not notify the IAM of any facilities consolidation plan in 2014 “because there was no plan.” Tr. 410. Reading from his March 29, 2017 Affidavit, he stated, “At this time, the employer didn’t inform the union of a plan to consolidate all of its operations into one facility. All it planned was closing the Heritage Park and Love Field facilities. The employer did not know this was the plan at the time.” Tr. 410-411. He further conceded that he did not inform the Union or employees that the Rolls Royce line would be relocated to the DFW Center because “we didn’t know at the time.” *Id.*

Max Allen, former General Manager and Vice President of Operations, testified that in 2015, Airmotive never informed the Union of an intention to consolidate all Forest Park, Heritage Park and Love Field operations at DFW Center because there was no such plan at that time. He conceded that the plan to relocate all Heritage Park and Love Field employees to the DFW Center by the end of 2017 was not completed by that time. Tr. 258. When asked about a Phase Two, Three or Four of the consolidation plans, he was unable to recall even basic objectives or details of any phase. Tr. 306. He also told employees he did not know where the Forest Park Rolls-Royce line would be moved. Tr. 240.

By the time Airmotive withdrew recognition of the Union in January 2017, it had failed to completely implement its purported facilities consolidation plan. The Company never notified or communicated with the IAM about the alleged plan, and it has produced no documents describing or explaining any comprehensive plan in a coherent manner. Thus, the employer’s plan defense should be summarily rejected.

10. Gitano Is Inapposite

Airmotive may rely on the Board's decision in *Gitano Distribution Center*, arguing that only a separate bargaining unit would be appropriate at the DFW Center and that an election must be held upon a showing of interest to determine whether any union should represent the hourly-rated employees. *Gitano Distribution Center*, 308 NLRB 1172 (1992). *Gitano* embodies a limited exception in the case of *spinoffs* where the employer transfers represented employees of a multi-unit facility to a new plant. In such cases, the Board will rebuttably presume that the new facility is a separate appropriate unit. The Board then applies a simple majority test to determine if the union should be recognized by the employer. The holding of *Gitano* is quite limited and is not applicable to this case. See *Rock Bottom Stores*, 312 NLRB at 401-402. In any event, the result would be the same even if *Gitano* were applicable because the Union has majority support.

B. Dallas Airmotive Violated Section 8(a)(5) and (1) of the Act by Implementing Unilateral Changes to Working Conditions

An employer's unilateral changes that modify conditions of employment constitute a per se violation of Section 8(a)(5) and (1). *NLRB v. Katz*, 369 U.S. 736 (1962); *Gaylord I*, 358 NLRB at 528. An employer is prohibited from making changes related to wages, hours, or other terms and conditions of employment without affording the certified representative notice and a meaningful opportunity to bargain. *Flambeau Airmold Corp.*, 334 NLRB 165 (2001); *Gaylord I*, 358 NLRB at 528. In this case, it is undisputed that Airmotive made numerous unilateral changes concerning wages, hours, and other terms and conditions of employment of unit employees at DFW Center while the CBA was in effect without providing any notice to the IAM in violation of the Act. 29 U.S.C. § 158(a)(5); see also Ex. J-28, art. 3 ("The Company will discuss any changes in its rules, regulations and instructions with the Union prior to placing same in effect.").

An employer must give sufficient notice of a change in conditions of employment in advance of actual implementation to allow a reasonable opportunity to bargain. *Times Union*, 356 NLRB 1339, 1354 (2011) (citing *Ciba-Geigy Pharmaceuticals Division*, 264 NLRB 1013, 1017 (1982)). Airmotive never gave the IAM notice and an opportunity to bargain over such changes.

The Company does not dispute that it implemented unilateral changes in wages, hours and working conditions that are mandatory subjects of bargaining. *See, e.g., Katz*, 369 U.S. 736 (aspects of wages are mandatory subjects of bargaining); *Pepsi Cola Bottling Co. of Fayetteville, Inc.*, 330 NLRB 900, 902 (2000) (change in start time was material, substantial and significant change). These changes involved job security, rules of conduct, discipline and discharge procedures, seniority, hours of work, shift schedules, overtime accrual and pay, vacation leave accrual and pay, reporting and call-back pay, transfers, temporary assignments, job selection, promotions, health and safety, union dues checkoff, and the appointment, location and access of Union representatives. By such conduct, the Company violated Section 8(a)(5) and (1) of the Act. All of these changes were material, substantial and significant. *See id.*

C. Dallas Airmotive Violated Section 8(a)(2) and (1) of the Act Through Its Ambassadors Committee

Under Section 8(a)(2) of the Act, it is unlawful for an employer “to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it.” 29 U.S.C. § 158(a)(2). This was a critical provision of the National Labor Relations Act of 1935, which was designed to strengthen the right of employees to organize and bargain collectively with employers. *Electromation, Inc.*, 309 NLRB 990, 992-93 (1992), *enfd.* 35 F.3d 1148 (7th Cir. 1994). In Senator Wagner’s opening remarks, he stated that, “The greatest obstacles to collective bargaining are employer-dominated unions.” *Electromation*, 309 NLRB

at 992 and n. 10 (quoting 1 *Legislative History of the National Labor Relations Act of 1935*, 15-16 (GPO 1949)). He further noted that such an employer-dominated union “makes a sham of equal bargaining power” because “only representatives who are not subservient to the employer with whom they deal can act freely in the interest of employees.” *Electromotion*, 309 NLRB at 992.

In order to determine whether Airmotive violated Section 8(a)(2) by implementing the Ambassadors Committee, it is necessary to determine whether the Ambassadors Committee is a labor organization and, if so, whether Airmotive dominated the committee. *Electromotion, Inc.*, 309 NLRB at 994; *T-Mobile USA, Inc. v. Communication Workers of America, AFL-CIO*, No. 14-CA-170229, 2017 WL 1230099, slip op. at 31 (NLRB Div. of Judges, April 3, 2017) (Steckler, ALJ). Airmotive’s intent in forming the Ambassadors Committee is irrelevant to the analysis of a possible Section 8(a)(2) violation. “The statute applies whether intent is benevolent or malevolent.” *T-Mobile*, slip. op. at 31 (citing *Alta Bates Hospital*, 266 NLRB 485, 491 (1976)).

1. The Ambassadors Committee Is a Labor Organization Under Section 2(5) of the Act

Under Section 2(5) of the Act, a labor organization is defined as:

. . . [A]ny organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

29 U.S.C. § 152(5).

The definition of labor organization is broadly construed and is a question of fact. *T-Mobile*, slip op. at 32 (citing *NLRB v. Peninsula General Hospital Med. Ctr.*, 36 F.3d 1262, 1269 (4th Cir. 1994) and *Electromotion*, 309 NLRB 990, 993). “The organization is not required to

have a formal structure, elected officers, constitution or bylaws, nor is it required to meet regularly.” *Id.* The Board applies a four-part test in determining whether the definition of *labor organization* applies to a particular group:

(1) employee participation, (2) a purpose to deal with employers, (3) concerning itself with conditions of employment or other statutory subjects, and (4) if an “employee representation committee or plan” is involved, evidence that the committee is in some way representing the employees.

Electromation, 309 NLRB at 996; *see also T-Mobile*, slip op. at 32.

a. Employee Participation in the Ambassadors Committee

A number of Airmotive’s employees participated in the Ambassadors Committee including Jim LeFlore, former local union president, acting local union recording secretary, and a member of the Union’s negotiating committee on three occasions. Kenny Jackson, formerly a shop steward, also participated in the ambassadors Committee. Tr. 132, 276, 339-40; Ex. GC-24, p. 3. The Ambassadors Committee was bilateral, meaning that it included managers and hourly-rated employees. Ex. GC-24, pp. 2-3. Airmotive selected the committee’s employee representatives by invitation based on the Company’s perception as to which employees were leaders. Tr. 277.

b. The Ambassadors Committee Had the Purpose of Dealing with Management Concerning Employment Conditions

In this context, the Ambassador Committee’s “purpose” does not mean motive, such as hostility toward unions, but rather what the organization is organized to accomplish. This may be shown by what the organization actually does. *Electromation*, 309 NLRB at 996. “If a purpose is to deal with an employer concerning conditions of employment, the Section 2(5) definition has been met regardless of whether the employer has created it, or fostered its creation, in order to

avoid unionization or whether employees view that organization as equivalent to a union.” *Electromation*, 309 NLRB at 996-97; *see also T-Mobile*, slip op. at 32.

The testimony in this matter clearly establishes that at a principal purpose of the Ambassadors Committee was to “deal with” employer-employee relations and conditions of employment. In this regard, the testimony undoubtedly belies Airmotive’s counsel’s statement on the record that the Ambassadors were merely set up as a method of communication to the employees about the relocation to DFW Center. Tr. 426. Although one motive for creating the Ambassadors Committee does appear to have been to obtain information from employees (*see, e.g.,* Tr. 338; Ex. GC-24, pp. 2-3), it clearly also was created for the purpose of having employee Ambassadors present information about the employees and their concerns to management. In this regard, Allen, who testified that he and Stephanie Hanes created the Ambassadors Committee in the spring of 2016, related that Airmotive created the Ambassadors Committee to “be the eyes and ears and voice of the people.” Tr. 235-37, 239-40, 273, 299.

- Q. An employee who finds him or herself in that situation [facing termination], they would not have any kind of representation with them, would they?
- A. Representation from who?
- Q. They would not have a representative to assist them in bringing their case, if you will.
- A. They’re welcome to have people plead on their behalf.
- Q. But pleading on one’s behalf is not the same as [a] representative, is it?
- A. Define representative.
- Q. Someone who has authority to speak and assist.
- A. Actually, we put in place a team of people called the ambassadors at the new facility who could sort of be the eyes and ears and voice of the

people. If there situations where we needed a view from the workforce, we would go to those people.

Tr. 272-73 (emphasis added).

In addition to describing the Ambassadors as “people management would go to in the event they needed to get the view of the workforce in certain situations,” Allen further described the Ambassadors Committee as a way for Airmotive “to partner with the workforce.” Tr. 275. It is apparent that Allen, as co-creator of the Ambassadors Committee, regarded the committee as not only a means of communication to employees about the move to the DFW Center, but also as an employer-dominated group that represents employees in bringing their views and concerns to management. This is exactly the type of organization that Section 8(a)(2) prohibits.

The evidence shows Airmotive envisioned that the Ambassadors Committee would act as representatives in bringing employees’ concerns about working conditions to management and that the Ambassadors have functioned in this manner. Tr. 275-76, 280-81, 298. The employees whose concerns were addressed were not present at the committee’s meetings with management. The Ambassadors did not bring the concerns to management in a ministerial fashion, but for the purpose of discussing them at such meetings. *See T-Mobile*, slip op. at 33 (distinguishing *EFCO Corp.*, 327 NLRB 372 (1988), *enfd.* 215 F.3d 1318 (4th Cir. 2000) (employee committee did not “deal with” where they only reviewed employee suggestions to screen them in a “clerical or ministerial” method.). Thus, Airmotive certainly designated the Ambassadors as the representatives of their fellow employees. *T-Mobile*, slip op. at 33 (citing *NLRB v. Webcor Packaging, Inc.*, 118 F.3d 1115, 1120-1121 (6th Cir. 1998), *enfg. in rel. part*, 319 NLRB 1204 (1995)).

c. The Ambassadors Deal with Conditions of Employment

The hearing record not only shows that the intended purpose in setting up the Ambassadors Committee included dealing with management, but that in practice the Ambassadors did deal with the Company with respect to conditions of employment. Thus, the evidence undermines the employer attorney's claim (which he made on the record) that there was "very specific testimony" that the Ambassadors did not deal with terms and conditions of employment. Tr. 426. Significantly, as used in Section 2(5), the terms *dealing with* are broader than the terms *collective bargaining*. *NLRB v. Cabot Carbon Co.*, 360 U.S. 203 (1959); *Electromation*, 309 NLRB at 995; *T-Mobile*, slip. op. at 33.

Allen testified that during his tenure at Airmotive the Ambassadors Committee included managers and rank-and-file employees. Tr. 273-74. Allen admitted that the Ambassadors at Forest Park engaged with employees with respect to their concerns about working conditions.

Q. Did the employees engage with the ambassadors committee at Forest Park with respect to their concerns about working conditions?

A. Yes.

Q. How so?

A. We'd have generic meetings around what's on your all's minds, what's the hot buttons today that we need to answer, what are the concerns.

Tr. 298 (emphasis added).

Various working conditions that the Ambassadors discussed included safety issues on a daily basis, specific safety issues such as noise levels and hearing protection, the best shift hours for particular teams in light of their workload, and accounting/payroll errors. Tr. 275-76, 80-81. The Ambassadors met with management once or twice each month to discuss issues such as

safety, break times, and employee lunch options. Tr. 340. The Ambassadors informed management of any employment issues they sought to be address. Tr. 275-76.

d. The Ambassadors Committee Represents Employees

Allen referred to the Ambassadors as not only “the eyes and ears” of the employees, but also “the voice” of the employees, from whom management would discern the consensus viewpoint of the workforce. Tr. 273.

2. Airmotive Dominates the Ambassadors Committee

Although Section 8(a)(2) does not define the term *domination*, the Board has held that where a labor organization (1) has been established by virtue of the employer’s specific act of creating the employee organization, (2) its structure and function are essentially determined by management, and (3) its continued existence depends on the fiat of management, actual domination has been established. *Electromation*, 309 NLRB at 995. Conversely, domination is not extant where the employees determine the organization’s structure and function even if the employer has the potential ability to influence the organization’s structure or effectiveness. *Id.* Thus, “when the impetus behind the formation of an organization of employees emanates from an employer and the organization has no effective existence independent of the employer’s active involvement, a finding of domination is appropriate if the purpose of the organization is to deal with the employer concerning conditions of employment.” *Id.* at 996.

In this case, all three elements necessary to a finding of domination of the Ambassadors Committee by the employer are present. *Id.* The Ambassadors Committee was a creation of Airmotive’s Vice President of Operations and Human Resources Director, and its continued existence is solely dependent on management. *See id.* at 998 (company’s conduct constituted domination in the formation and administration of Action Committees where it was the

company's idea to create the committees and it drafted the written purposes and goals). Moreover, a reasonable inference from the totality of the testimony is that the Ambassadors carried on their representational activities during working hours on paid duty time, resulting in an unlawful contribution of support. *See id.*

The hourly-rated employees who served as Ambassadors met with members of management on a regular basis. Tr. 274. Having created the structure of the Ambassadors Committee, the Company invited certain employees to participate based on management's perception as to which employees were recognized as leaders by their co-workers. Tr. 273, 277.

The evidence further establishes that management dominated the Ambassadors Committee by instructing Ambassadors not to discuss the topic of unionization at their meetings. Tr. 341-42. The Ambassador Committee sometime held conference calls since each of the three original DFW sites had Ambassadors. Tr. 340. Jackson described an argument over unionization that transpired during one of the first conference calls in September 2016, and Airmotive's response to the argument:

Q. How did that conversation [about break times] come up?

A. This came up at Forest Park. We had a meeting, conference call. Each site had ambassadors at it. We were sitting there networking and we were talking about the break times. At that point, somebody from Grapevine said, "We don't want it like it is at Forest Park because there's no contract over here." At that point, I heard somebody in the background say, "Yeah, we don't want a union over here either."

I looked at Stephanie Hanes and was like, where is all that coming from? She tried to get us back on track and say, hey, guys, we need to be talking about ambassador things here. They still kept going on about, "Yeah, we know Kenny Jackson is the local lodge president and we don't want a union over here." That's when I got forceful and I said, "Are you speaking for everybody at Grapevine?" He said, "Yeah, I'm speaking for everybody over here." I said "you can't do that because each person has their mind, they can make their own decision if we have to go that route."

But that's not what we're here for, we're here to talk about ambassador stuff."

That's when Stephanie [Hanes] stepped in again to clean it up and then we got back on track on the meeting.

Tr. 340-41 (emphasis added).

Hanes later told Jackson that Allen had directed Heritage Park and Love Field Ambassadors not to discuss the Union during Ambassador meetings. Allen later confirmed his instructions to Jackson. Tr. 342. Airmotive's domination of the Ambassador's committee in this context is egregious given that this argument over unionization occurred in September 2016 before the Union was even aware that Airmotive would withdraw recognition from the Union. Tr. 341.

As with the employer-dominated labor organizations involved in *Electromation*, the Ambassadors Committee was the creation of Airmotive and the impetus for its continued existence rested with management and not the employees." *Electromation*, 309 NLRB at 998. Accordingly, Airmotive unlawfully dominated the Ambassadors Committee in its formation and administration.

V. Conclusion

For the foregoing reasons, the IAM respectfully requests the Administrative Law Judge to make appropriate findings of fact and conclusions of law, find that Respondent violated the Act as alleged in the Amended Complaint, and order Respondent to cease and desist from engaging in its egregious pattern of conduct. The IAM further requests that the Judge order the posting of a notice and the distribution of the notice by electronic mail to all employees. The IAM further requests that the Judge require Respondent to bargain in good faith, order a make-whole remedy for all employees adversely affected by Respondent's unilateral changes, and

order Respondent to remit payment to the IAM of the total amount of financial losses sustained by the Union by reason of the unlawful termination of dues check-off. The IAM further seeks any and all other relief necessary to effect the purposes and policies of the Act.

Dated August 20, 2018.

Respectfully submitted,

/s/Rod Tanner
Rod Tanner

Certificate of Service

The undersigned attorney for the Charging Party certifies that on August 20, 2018, he served a copy of the foregoing Charging Party's Post Hearing Brief to the Administrative Law Judge on the parties via U.S. First Class Mail and electronic mail.

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